

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MOTION TO ACCEPT SUBSEQUENT AMENDMENTS BY LEAVE OF COURT

Mark N. Fellenz
PLAINTIFF

V.

Enkata Technologies
DEFENDANT

CIVAL ACTION

NO. 04•10563 PBS

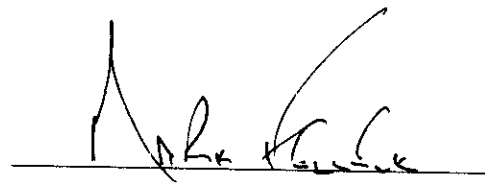
MOTION

1. Mark Fellenz ("Plaintiff") requests by leave of Court that the Court allow additional Amendments to the original Complaint filed against Enkata Technologies ("Defendant"). Fed. R. Civ. P. 15(a) allows for one amendment to be filed as a matter of course prior to a responsive pleading being served and that any additional amendment(s) may only be allowed by leave of Court or by written permission of the adverse party. Plaintiff admits that he has inadvertently and unintentionally run roughshod over 15(a) by having focused more narrowly on the Local Rules provided by the Pro Se Clerk, which do not make mention of the 'one amendment' policy. Plaintiff, thereby, requests under Fed. R. Civ. P. 15(a) leave of Court to allow the added Amendments as already submitted and filed to date with the Pro Se Clerk.
2. While Plaintiff has made a concerted effort to review the Federal Rules of Civil Procedure as best as possible given the Pro Se nature of this civil action, Plaintiff was not specifically / consciously aware of Fed. R. Civ. P. 15(a) and thereby asks for leniency and leave of Court. Plaintiff makes this request for the following reasons:

- In their entirety, all Amendments as filed primarily serve to establish as complete an account of historical fact directly related to the original Complaint as possible. It may be worth noting that the subsequent Amendments were necessary in part directly due to Defendant's refusal to share important, historical information with Plaintiff (and to which Plaintiff is entitled), which hindered Plaintiff's ability to initially draft a comprehensive Complaint. The amendments filed with the Pro Se Clerk bring forth added information that would reasonably have been include in the original Complaint if it had simply been available at the time the original Complaint was drafted. To wit, Plaintiff offers an example presented in one of the Amendments of Defendant continuing to refuse to explain the sequence of events related to the carrier change as just one example of Defendant not making available information Plaintiff is entitled to. Plaintiff should not be penalized for Defendant's self-serving actions of avoiding fair resolution of this matter.
- On a case-by-case basis, most Amendments raise added violations of applicable law as more recently uncovered / established by Plaintiff. These additional violations of applicable law are not necessarily enumerated or alluded to in the original Complaint and, thereby, are deserving circumstances to consider in their own right(s). Additionally, added violations of applicable law have reasonably lead to added remedies, which are also presented in the Amendments.
- Amendments were filed in part as a result of the inadvertent delay in issuing summons for Defendant. Plaintiff – whether rightly or wrongly – was lead to believe that once Plaintiff's application to proceed without prepayment of fees was denied it was at *that* point the Court would begin considering / weighing the merits of accepting the Complaint. It seemed logical that any new, additional information pertinent to the Complaint might be helpful to the Court, and thereby, Amendments were filed at regular intervals in a good-faith attempt to assist the Court's efforts, not to protract the matter before the Court or to make the matter confusing for Defendant.

- It has been Plaintiff's good-faith effort to continue working toward an amicable resolution of this matter with Defendant while also simultaneously continuing to gather pertinent facts and information. Through this process, new and important information has come to light that rightly should be brought to the Court's attention.
3. Plaintiff hereby asks for leniency and leave of Court to allow the added Amendments as already submitted and filed to date with the Pro Se Clerk.

Signature

A handwritten signature in black ink, appearing to read 'Mark Fellenz', written over a horizontal line.

Name

MARK FELLEENZ, PRO SE

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